

05 - 555

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ORIGINAL

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District
Name (under which you were convicted): <u>ANTHONY L. GAINES</u>		Docket or Case No.: <u>0002014423</u>
Place of Confinement: <u>DELAWARE CORRECTIONAL CENTER</u>		Prisoner No.: <u>00181314</u>
Petitioner (include the name under which you were convicted): <u>ANTHONY L. GAINES</u>		Respondent (authorized person having custody of petitioner): <u>DELAWARE CORRECTIONAL CENTER</u>
The Attorney General of the State of <u>DELAWARE</u>		<u>MRS. JANE BRADLEY</u>

PETITION

FILED

AUG 1 2005

- (a) Name and location of court that entered the judgment of conviction you are challenging: SUPERIOR COURT OF THE STATE OF DELAWARE, NEWCASTLE COUNTY
500 N. KING STREET, WILMINGTON, DELAWARE, 19801
(b) Criminal docket or case number (if you know): VND0-03-0512-02
- (a) Date of the judgment of conviction (if you know): JAN 10, 2001
(b) Date of sentencing: JAN 10, 2001
- Length of sentence: 5 yrs. Susp 6 mths LS, 6 mths HC, 181 Probation Sent. Modified
- In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
- Identify all crimes of which you were convicted and sentenced in this case: Burglary 2nd PG.
PDWBPP NOLP, CC DWI NOLP, TERROR THREAT NOLP, OFF TOUCH NOLP,
CRIM MISC NOLP, OFF TOUCHING NOLP.
- (a) What was your plea? (Check one)

(1) Not guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input checked="" type="checkbox"/>
(2) Guilty <input checked="" type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☒

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Superior Court

(b) Docket or case number (if you know): VN000.30.51201/0002014423

(c) Result: DENIED

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): _____

(f) Grounds raised: DOUBLE JEOPARDY, TIME PREVIOUSLY SERVED, VIOLATION OF DUE PROCESS, VIOLATION OF RULE 82 CHANGING JUDGE, ILLEGAL SENTENCING, ABUSE OF DISCRETION.

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: NEW CASTLE County Superior Court
 (2) Docket or case number (if you know): VN0003051201/0002014423
 (3) Date of filing (if you know): 5-25-05, 8-10-04*, 6-1-05
 (4) Nature of the proceeding: VIOLATION OF LEVEL 3 PROBATION
 (5) Grounds raised: VIOLATION OF RULE 82 Changing Judges with out notification, VIOLATION OF DUE PROCESS, DOUBLE JEOPARDY, VIOLATION OF T.I.S. SENTENCING GUIDELINES, VIOLATION OF 5, 8, AND 14 AMENDMENT, ALSO SIXTH AMENDMENT ABUSE OF DISCRETION.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: MOTION DENIED

(8) Date of result (if you know): 8-10-05,

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: NEW CASTLE County Superior Court
 (2) Docket or case number (if you know): VN0003051201/0002014423
 (3) Date of filing (if you know): 8-10-05, 5-25-05, 6-1-05
 (4) Nature of the proceeding: VIOLATION OF LEVEL 3 PROBATION
 (5) Grounds raised: VIOLATION OF RULE 82 Changing Judges with out notification, VIOLATION OF DUE PROCESS, DOUBLE JEOPARDY, VIOLATION OF T.I.S. SENTENCING GUIDELINES, VIOLATION OF 5, 8, 14, AND SIXTH AMENDMENT. ABUSE OF DISCRETION.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: DENIED

(8) Date of result (if you know): N/A

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: NEW CASTLE County Superior Court

(2) Docket or case number (if you know): VN0003051201/0002014423

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: VIOLATION OF LEVEL 3 Probation

(5) Grounds raised: VIOLATION OF RULE 82 Changing Judges with out notification, VIOLATION OF DUE PROCESS, Double JEOPARDY, VIOLATION OF TJS SENTENCING GUIDELINES, VIOLATION OF 5, 8, 14, AND SIXTH AMENDMENT. ABUSE OF DISCRETION

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: DENIED

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☒

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Imprison in DCC SHU MAX NO ACCESS TO LAW library only by mail. All legal work is pro-se

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: VIOLATION OF RULE 82.37. THE SIXTH, EIGHTH AND
FOURTEETH AMENDMENT.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PETITIONER HAS A RIGHT TO PRIOR NOTIFICATION OF CHANGE OF JUDGE
ESPECIALLY SINCE JUDGE GEDELIN WAS FAMILIAR WITH ALL FACES OF
THE CASE WHILE JUDGE HERLIHY WAS NOT

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POST-CONVICTION MOTION, HABEAS CORPUS

Name and location of the court where the motion or petition was filed: NEW CASTLE

COUNTY SUPERIOR COURT 500 N. KING STREET WILM, DE 19801

Docket or case number (if you know): VN0003051201/0002014423

Date of the court's decision: 8-10-04, 6-1-05, 5-25-05

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NEW CASTLE County Superior Court 500 N. King Street, Wilmington, DE 19801

Docket or case number (if you know): VN0003051201/0002014423

Date of the court's decision: 8-10-04, 5-25-05, 6-1-05

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I Did!

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: VIOLATION OF TIS AND DUE PROCESS UNDER FIFTH AND FOURTEENTH AMENDMENT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

TIS Guide Lines STATES THAT AN OFFENDER WHO DOES NOT PICK UP A NEW CHARGE CAN ONLY BE MOVED UP ONE PROBATION LEVEL. PETITIONER WAS ONLY ON LEVEL 3 PROBATION AND AFTER BEING IN PRISON LEVEL 5. COURT ORDER AND VIOLATION LEVEL 4 TASC WHICH

PETITIONER NEVER HAD TASC OR ANY LEVEL 4.
 JUDGE HERLIHY VIOLATED TIS AND PETITIONERS DUE PROCESS
 ABUSE OF DISCRETION

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PREVIOUSLY TIME SERVED, HABEAS, Post Conviction.

Name and location of the court where the motion or petition was filed: SUPERIOR COURT OF DELAWARE, NEW CASTLE COUNTY

Docket or case number (if you know): W0003051201/0002014423

Date of the court's decision: DEAIED

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NEW CASTLE COUNTY SUPERIOR COURT 500 N. KING STREET, WILMINGTON, DE

19801

Docket or case number (if you know):

VN0003051201/0002014423

Date of the court's decision:

8-10-04, 5-25-05, 6-1-05

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I Did!

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

GROUND THREE: Double Jeopardy

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PETITIONER WAS SUBJECTED TO DOUBLE JEOPARDY BY BEING INCORRECTLY RE-SENTENCED TO TWO YEAR LEVEL 5, WHICH ENHANCED HIS SENTENCE. JUDGE HERLBY ERRED BY SENTENCE PETITIONER TO TWO YEARS OF LEVEL 5, WHEN PETITIONER DID NOT HAVE TWO YEARS REMAINING ON HIS SENTENCE.

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction Relief
 Name and location of the court where the motion or petition was filed: NEW CASTLE County Superior Court 500 N. King Street, Wilm, DE, 19801
 Docket or case number (if you know): VN0003051201/0002014423
 Date of the court's decision: 8-10-04, 5-25-05, 6-1-05
 Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NEW CASTLE County Superior Court 500 N. King Street, Wilm, DE, 19801
 Docket or case number (if you know): VN0003051201/0002014423
 Date of the court's decision: 8-10-04, 5-25-05, 6-1-05
 Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I Did!

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: VIOLATION OF DUE PROCESS

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

FAILURE TO CREDIT PETITIONER FOR SERVING 2 YEARS LEVEL 5 AND
2 MONTH GOOD TIME VIOLATES PETITIONER DUE PROCESS AND
AMOUNTS TO DOUBLE JEOPARDY. HOUSE OF DISCRETION

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: HABEAS CORPUS

Name and location of the court where the motion or petition was filed: NEW CASTLE
COUNTY SUPERIOR COURT 500 N. KING STREET WILM, DE 19801

Docket or case number (if you know): VN0003051201/0002014423

Date of the court's decision: 8-10-04, 5-25-05, 6-1-05

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NEW CASTLE County Superior Court 500 N. King Street, Wm, DE. 19801

Docket or case number (if you know): VN0003051201/0002014423

Date of the court's decision: 8-10-04, 5-25-05, 6-1-05

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: DUE PROCESS BEING VIOLATED
NOT ABLE TO GO TO LAW LIBRARY.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: TO BE FREED OF
PLACE AT HOQAICREA INTERNATIONAL TREATMENT BED
OPEN AWAITING 1126 ~~1126~~ EAST BRANDYWINE STREET WILM, DE 19802
or any other relief to which petitioner may be entitled.

Pro SE Anthony S. Gaines
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

July 27, 2005 (month, date, year).

Executed (signed) on 7-27-2005 (date).

Anthony S. Gaines
Signature of Petitioner

*(...continued)

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. I, petitioner Anthony S. James

IN FORMA PAUPERIS DECLARATION

NEW CASTLE County Superior Court

[Insert appropriate court]



U.S.M.S.
X-RAY

IM Anthony L. GAINES
SBI# 1813141 UNIT SH119B III

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977

Clerk of the
U.S. District Court
District of Delaware
844 King Street
Lock box 18
Wilmington, DE 19801